

**IN THE DRAWINGS:**

Please kindly replace Figures 7-9 with the proposed corrected drawing sheets filed herewith. The proposed amendments to Figures 7-9 make the figures legible.

### **REMARKS:**

Claims 1-30 were presented for examination and were pending in this application. In an Official Action dated March 21, 2005, claims 1-30 were rejected. Applicants thank Examiner for examination of the claims pending in this application and addresses Examiner's comments below.

Applicants herein amend claims 1, 12, 14-22 and 24-29. Claims 10 and 23 are canceled. These changes are believed not to introduce new matter, and their entry is respectfully requested. The claims have been amended to expedite the prosecution of the application in a manner consistent with the Patent Office Business Goals, 65 Fed. Reg. 54603 (Sept. 8, 2000). In making these amendments, Applicants have not and do not narrow the scope of the protection to which Applicants consider the claimed invention to be entitled and do not concede that the subject matter of such claims was in fact disclosed or taught by the cited prior art. Rather, Applicants reserve the right to pursue such protection at a later point in time and merely seek to pursue protection for the subject matter presented in this submission.

Based on the above Amendment and the following Remarks, Applicants respectfully request that Examiner reconsider all outstanding objections and rejections, and withdraw them.

### **Objection to the Drawings**

The Examiner has objected to Figures 7-9, stating that Figures 7-9 are illegible. Applicant respectfully submits Proposed Drawing Changes to Figures 7-9 to make these Figures legible. Approval of the Proposed Drawing Changes is respectfully requested.

### **Objection to the Specification**

Examiner has pointed out that the word “pseudocode” is misspelled on page 8, line 6 and page 18, line 26. However, page 8, line 6 states:

present network architecture 100, the networks 102 may each take any form including,

Also, page 18, line 26 states:

The following is the packet classification routine that

Applicants kindly note that the word “pesudocode” does not appear in the cited sections of the specification. Accordingly, Applicants respectfully request further clarification as to Examiner’s objections. Furthermore, Applicants have inspected the specification and every instance of the word “pseudocode” appears to be correctly spelled.

### **Response to Rejection Under 35 USC § 112, Paragraph 1**

In paragraph 6 of the Office Action, Examiner has rejected claims 12, 25, 28 and 30 as allegedly lacking enablement. This rejection is respectfully traversed.

Examiner has stated that the specification lacks material that explains how having a state machine in a valid state would be useful in calculating response times or representing response times. Applicants kindly point out that the specification describes the useful ways in which the states of a state machine may be used to, for example, calculate and/or represent response times. For example, at page 15, line 20-page 16, line 3, the specification states that:

If the verb is valid (i.e. a known application verb), the state machine is updated in operation 608. It is then determined in operation 610 as to whether the response is complete. This may be accomplished by using

the state machine associated with the data structure. If the response is not complete, the method continues in operation 604. If it is complete, however, a response time is calculated in operation 612 using the information in the data structure (this may be done by the engine or any other mechanism being deployed).

Subsequently, it is determined whether the state machine is in a valid state in decision 614. It should be noted that the state machine takes into account various errors, complications, network mishaps, etc. that leave the state machine in a detectable invalid end state. Thus, only if the state machine is in a valid state, it is utilized as being representative of the response time. See operation 616.

Accordingly, Applicants respectfully submit that the specification contains “a written description of the invention...in such full, clear, concise and exact terms as to enable any person skilled in the art to which it pertains...to make and use the same.” See 35 U.S.C. §112 (emphasis added). Thus, Applicants kindly request withdrawal of this rejection.

### **Response to Rejection Under 35 USC 102**

In paragraph 10 of the Office Action, Examiner rejects claims 1-6, 8-19, 21-28 and 30 under 35 USC § 102(e) as allegedly being anticipated by U.S. Patent No. 6,839,751 to Dietz et al. (“Dietz”). This rejection is now traversed.

Claim 1 has been amended to more clearly show the ability to monitor certain application verbs. Claim 1, as amended, recites a method for calculating application verb response times comprising, among other things, “determining whether the application verbs are valid” and “updating a state machine if it is determined that the application verbs are valid.” This is greatly beneficial as it allows for a more precise determination of application performance by allowing selective analysis and recording of application verbs or groups of application verbs as defined by the valid states of the state machine.

In contrast, Dietz describes a method for re-using information from data transactions in maintaining statistics in network monitoring. Dietz records statistics for all packet transmissions. Unlike the method recited in claim 1, Dietz calculates response time “between the start of Data Messages from the Client to the Server and the start of their subsequent response Data Messages from the Server to the Client.” Accordingly, every packet transmission or receipt associated with an application flow affects the statistical time measurement for that application flow. See Dietz, col. 36, lines 54-59. By contrast, as recited in claim 1, only after “determining whether the application verbs are valid” and “updating a state machine if it is determined that the application verbs are valid” is information relating to the application verbs stored. Although Dietz “determines the protocols and where in the state sequence for a flow this protocol’s packet belongs,” this determination is simply used to classify the received packet into a flow to simplify later addition of more information to the flows. See Dietz col. 11, lines 43-45; col. 11, lines 40-58; col. 12, lines 62-65. Unlike the method recited in claim 1, Dietz never determines “whether the application verbs are valid” before storing information, but records information for all received packet data.

Accordingly, for at least this reason, claim 1 is patentable over Dietz. Applicants note that claims 2-9 and 11-13 depend, either directly or indirectly, from claim 1. Hence, for at least the reason set forth above, claims 2-9 and 11-13 are also patentable over Dietz. Applicants further note that claims 14, 27, 29 and 30 also recite elements that include “determining whether the application verbs are valid” similar to that recited in claim 1. Hence, for at least the reason described above with respect to claim 1, claims 27, 29, 30, and 14, as well as its dependent claims 15-22 and 24-26 are also patentable over Dietz.

Claim 28 is also distinguishable from Dietz. Claim 28 recites a

computer readable medium having computer readable instructions...the computer readable instructions configured to implement a data structure, comprising a plurality of application verb objects...a state machine object; wherein the application verb objects and the state machine object are capable of being used to validate response times.

This configuration stores all response time measurements and the state machine for verifying measurement accuracy in a single location to reduce the time needed to access the measurements.

Dietz only describes using a data structure to “describe what will be recognized in the headers of packets” or to store “the different states and state transitions that occur in different conversational flows.” Dietz, col. 9, lines 43-44; col. 53-54. Also, Dietz creates two separate data structures, one to describe the packet header contents and one to account for the states and state transitions. See Dietz, col. 9, lines 40-58. Dietz does not disclose a data structure containing “a plurality of application verb objects for identifying information relating to application verbs...and a state machine object,” but stores the state machine in its own data structure. Also, Dietz does not disclose creating a data structure for storing “a plurality of application verb objects,” and does not disclose combining the “application verb objects and the state machine object” in the same structure. Therefore, for at least these reasons, claim 28 is patentable over Dietz.

Based on the above Amendment and these Remarks, Applicants respectfully submit that for at least these reasons claims 1-9, 11-22 and 24-30 are patentably distinguishable over the cited reference. Therefore, Applicants respectfully request that Examiner reconsider the rejection, and withdraw it.

### **Response to Rejection Under 35 USC 103(a)**

In paragraph 26 of the Office Action, Examiner rejects claims 7, 20 and 29 under 35 USC § 103(a) as allegedly being unpatentable in view of Dietz in combination with common knowledge in the art. This rejection is respectfully traversed.

As claim 7 depends from claim 1, all arguments advanced above with respect to claim 1 are hereby incorporated so as to apply to claim 7. Similarly, claim 20 depends from claim 14 and all arguments advanced above with respect to claim 14 are hereby incorporated so as to apply to claim 20. As Examiner has failed to point out any prior art teaching which anticipates or renders obvious the explicit recitation of “determining whether the application verbs are valid” and “updating a state machine if it is determined that the application verbs are valid,” dependent claims 7 and 14 are patentably distinct from the cited reference combined with alleged knowledge in the art. Therefore, it is respectfully submitted that the rejection is improper and should be withdrawn. Similarly, claim 29 also recites “determining whether the application verbs are valid” and “updating a state machine if it is determined that the application verbs are valid,” elements that, as discussed above, are not anticipated or made obvious by the cited reference alone or in combination with knowledge in the art.

Based on the above Amendment and these Remarks, Applicants respectfully submit that for at least these reasons claims 7, 14 and 29 are patentably distinguishable over the cited references, both alone and in combination. Therefore, Applicants respectfully request that Examiner reconsider the rejection, and withdraw it.

### Conclusion

In sum, Applicants respectfully submit that claims 1-9, 11-22 and 24-30, as presented herein, are patentably distinguishable over the cited references (including references cited, but not applied). Therefore, Applicants request reconsideration of the basis for the rejections to these claims and request allowance of them.

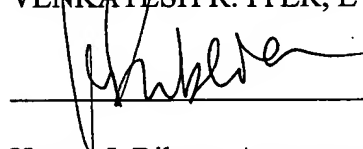
In addition, Applicants respectfully invite Examiner to contact Applicants' representative at the number provided below if Examiner believes it will help expedite furtherance of this application.

Date:

June 21, 2005

By:

Respectfully Submitted,  
VENKATESH R. IYER, ET AL.



Hector J. Ribera, Attorney of Record  
Registration No. 54,397  
FENWICK & WEST LLP  
801 California Street  
Mountain View, CA 94041  
Phone: (650) 335-7192  
Fax: (650) 938-5200  
E-Mail: hribera@fenwick.com